

ORDINANCE NO. 07-34

ORDINANCE GRANTING A CONDITIONAL USE PERMIT (CUP) AND GRANTING A SPECIAL USE PERMIT (SUP) TO ALLOW A CHILD DAY CARE CENTER ON PROPERTY ZONED R-1 (ONE FAMILY DISTRICT) AND GRANTING A VARIANCE PERMIT TO ALLOW PERVIOUS AREA OF 23.5%, WHERE A MINIMUM PERVIOUS AREA OF 30% IS REQUIRED, CONTRA TO HIALEAH CODE § 98-497(7) AND HIALEAH, FLA., LAND DEVELOPMENT CODE, REGULATION NO. 3-5(h). **PROPERTY LOCATED AT 715 EAST 49 STREET, HIALEAH, FLORIDA.** REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING PENALTIES FOR VIOLATION HEREOF; PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Planning and Zoning Board at its meeting of February 14, 2007 recommended approval of this ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

Section 1: The foregoing facts and recitations contained in the preamble to this ordinance are hereby adopted and incorporated by reference as if fully set forth herein.

Section 2: The below-described property is hereby granted a conditional use permit (CUP) and a special use permit (SUP) to allow a child day care facility on property zoned R-1 (One Family District) and a variance permit is hereby granted to allow pervious area of 23.5%, where a minimum pervious area of 30% is required, contra to Hialeah Code § 98-497(7) and Hialeah, Fla., Land Development Code, Regulation No. 3-5(h), which provided in pertinent part: "The following additional uses shall be

permitted in the R-1 one-family district, . . . (7) State-licensed or state-registered family day care homes as defined by F.S. § 402.302(7)” and “For aquifer recharge, low density residential uses shall have a minimum of 30 percent of the lot area as pervious,” respectively. The property is located at 715 East 49 Street, Hialeah, Miami-Dade County, Florida and legally described as follows:

LOT 10, BLOCK 6, LE JEUNE PARK, ACCORDING TO
THE PLAT THEREOF, AS RECORDED IN PLAT BOOK
45, PAGE 63, OF THE PUBLIC RECORDS OF MIAMI-
DADE COUNTY, FLORIDA, LESS THE SOUTH 5.00
THEREOF, FOR PUBLIC RIGHT-OF-WAY.

Section 3: Repeal of Ordinances in Conflict.

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 4: Penalties.

Every person convicted of a violation of any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be punished by a civil penalty not to exceed \$500.00 within the discretion of the court or administrative tribunal having jurisdiction. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. In addition to the penalty prescribed above, the city may pursue other remedies such as abatement of nuisance, injunctive relief, administrative adjudication and revocation of licenses or permits.

Section 5: Additional Penalties upon Violation of Conditions of Use.

Any change of the terms and conditions of the use identified in this ordinance and as provided in the Declaration of Restrictive Covenants, if submitted, will cause a revocation of the city occupational license if issued in connection herewith and the

property shall revert to the zoning classification without the benefit of the conditional use and associated variances.

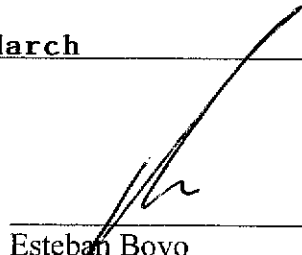
Section 6: Severability Clause.

If any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.

Section 7: Effective Date.

This ordinance shall become effective when passed by the City Council and signed by the Mayor or at the next regularly scheduled City Council meeting, if the Mayor's signature is withheld or if the City Council overrides the Mayor's veto.

PASSED and ADOPTED this 27th day of March, 2007.



Esteban Bovo
Council President

Attest: Approved on this _____ day of _____, 2007.

Rafael E. Granado, City Clerk

Mayor Julio Robaina

Approved as to form and legal sufficiency:



William M. Grodnick, City Attorney

Mayor Julio Robaina vetoed Ordinance No. 07-34. There was no motion to override the Mayor's veto; therefore, the veto stands.

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Ordinance was adopted by a unanimous vote with Councilmembers Bovo, Caragol, Casals-Muñoz, Gonzalez, Hernandez, Miel and Yedra voting "Yes".

Prepared by and return to:
City of Hialeah
Planning Division
501 Palm Avenue, Second Floor
Hialeah, FL 33010

**DECLARATION OF RESTRICTIVE COVENANTS
(Individual)**

(I) (WE), Onelio Hernandez & Genoveva Hernandez

Being the owner(s) of lands described herein:

Lot 10, Block 6, Le Jeune Park(Subdivision), according to the plat thereof, as recorded in
plat book 45, page 63, of the public records of Miami-Dade County, Florida,

The street property address is 715 East 49 Street, Hialeah, FL 33013,

The folio number is 04-2132-003-0820,

make the following Declaration of Restrictive covenants covering and running with the above property, specifying that this restriction during its lifetime shall be for the benefit of and a limitation upon all present and future owners of the real property described above, in favor of and enforceable by the City of Hialeah, Florida.

In connection therewith, the undersigned covenants, represents and agrees as follows:

1. The Child Day Care Occupation and Professional Licenses will be limited to no more than 30 children, on the property located at 715 East 49 Street Hialeah, Florida.
2. This covenant is intended and shall constitute a restrictive covenant concerning the use, enjoyment, and title to the above-described property and shall constitute a covenant running with the land and may be recorded in the Public Records of Miami-Dade County, Florida. This covenant shall remain in full force and effect and shall be binding upon the undersigned, its (their) heirs, successors and assigns until such time as the same is modified, amended or released and may only be modified, amended or released by a written instrument executed by the then owner having fee simple title to the property affected or to be affected by such modification, amendment, or release; provided, however, the same is also approved by the City Council and the Mayor of the City of Hialeah, or its successors, by resolution, upon advertised notice, or by ordinance if the covenant is adopted by ordinance or as otherwise provided in Hialeah Charter.
3. Where construction has occurred on said property described herein, pursuant to a permit issued by the City of Hialeah, and inspection made and approval of occupancy given by the City, the same shall create a conclusive presumption that the improvements thus constructed comply with the intent and spirit of the restrictions referenced herein and this Declaration of Restrictive Covenants shall not be construed as clouding title of any of said property on which such development has occurred.

DECLARATION OF RESTRICTIVE COVENANTS
(Individual)

IN WITNESS WHEREOF, (I) we have hereunto set out hands and seals at
715 E 49th, Hialeah this 26 day of 2, 2007
(location)

Signed, sealed and delivered in the
presence of:

Witness (2 Witnesses
required)

Typed/Printed Name

Cristina Hernandez

Onelio Hernandez
Owner

Typed/Printed Name Onelio Hernandez

Witness:

Typed/Printed Name _____

Witness (2 Witnesses
required)

Typed/Printed Name

Cristina Hernandez

Genoveva Hernandez
Co-Owner

Typed/Printed Name Genoveva Hernandez

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

I HEREBY CERTIFY that on this 26 day of February, 2007 before me, an officer duly
authorized in the State of Florida and in County of Miami-Dade, to take acknowledgments, personally
appeared Onelio Hernandez and Genoveva Hernandez To me known to be the
person(s) described herein and who executed the foregoing instrument, and he/she/they acknowledged before
me, under oath, that he/she/they executed same.

WITNESS my hand and official seal this 26 day of Feb., 2007

Elizabeth Sanchez
Notary Public, State of Florida

Elizabeth Sanchez

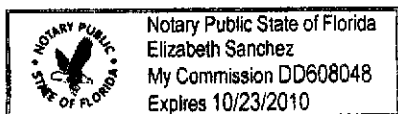
(Name of Notary Public: Print, Stamp, or Type
as Commissioned)

☒ Personally known to me, or
☐ Produced identification:

Identification produced: _____

☐ Did take an oath
☐ Did NOT take an oath

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Julio Robaina

Mayor

Esteban Bovo

Council President

Carlos Hernandez

Council Vice President



Council Members

Jose F. Caragol

Vivian Casals-Muñoz

Luis Gonzalez

Cindy Miel

Jose Yedra

City of Hialeah

April 10, 2007

Dear Members of the Hialeah City Council:

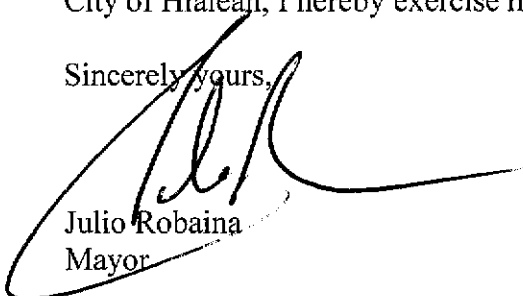
In accordance with the authority vested in the Mayor of the City of Hialeah, Florida, pursuant to Hialeah Charter § 2.01(a)(7), I hereby exercise my veto over Hialeah, Fla., Ordinance 07-34 that was passed by the Hialeah City Council on March 27, 2007 for the following reasons and objections:

1. Hialeah, Fla., Ordinance 07-34 granted a Special Use Permit (SUP) and a Conditional Use Permit (CUP) to allow a child day care center of 30 children on property zoned R-1 (One Family District), together with a variance of minimum pervious area, on property located at 715 East 49 Street, Hialeah, Florida.
2. I object to this expansion of the use because it negatively impacts the neighborhood. While state law allows a family day care home with a maximum of 10 children with no more than 5 children of preschool age in a single-family zoning district, the City is not required to allow an expanded day care facility in an R-1 (One Family District) zoning district, especially when parking and traffic circulation and landscaping issues are considered for granting or denying a Conditional Use Permit (CUP).
3. After reviewing and considering the zoning history, the tapes of the meetings, the Hialeah, Fla., Comprehensive Plan, the EAR-based amendments, site plan, radius map, survey and considering all other relevant information, and taking notice of the traffic on East 49 Street upon a site inspection, I conclude that the CUP and SUP should have been denied because the expanded use to accommodate 30 children will negatively impact the neighborhood.
5. My objections center on the safety issues created by the drop-off area that is close to an intersection that includes East 49 Street, where the traffic is extremely heavy. In fact, East 49 Street in that area has reached capacity (Level of Service of E) and is anticipated in the future to exceed capacity for traffic (Level of Service of F). During peak hours, 3,885 motor vehicles travel East 49 Street and to transport and drop off children in this vulnerable area is not good planning.

6. In addition, the site plan shows a very narrow, 8-foot wide strip of land that comprises a large portion of the playground area. This area is not designed for 30 children because the narrow corridor is not conducive for children to easily use the area. Overall, the expanded use on the lot is another example of over-utilization of property, where playground areas are crammed into unnatural dimensions and where drop-off areas create unnecessary dangers.

Based on the foregoing and pursuant to the powers granted me under the Charter of the City of Hialeah, I hereby exercise my right to veto Hialeah, Fla., Ordinance 07-34.

Sincerely yours,



Julio Robaina
Mayor